IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3570 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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PARESH ISHWARLAL PATEL

Versus

PRINCIPAL L U ENGG.COLLEGE

Appearance:

1. Special Civil Application No. 3570 of 2001

HL PATEL ADVOCATES for Petitioner No. 1-2

MR VM. PANCHOLI,GOVT PLEADER for Respondent No. 1-2

MR AR THACKER for Respondent No. 3

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 19/07/2001

ORAL JUDGEMENT

1. Heard Learned counsel Mr. Vijay Patel for the petitioners, learned AGP Mr. V.M. Pancholi for respondent State, and learned counsel Mr. A.R. Thacker for respondent No.3. Rule . Mr. Pancholi and Mr. Thacker waives service of rule for respondents No. 1 & 2 and 3 respectively.

2. Present petition has been filed by the petitioners for quashing and setting aside the order dated 2-5-2001 passed by respondent No.1, the Principal of the College at Annexure-A. The principal of the college, respondent No.1 by an order dated 2-5-2001 imposed penalty of expulsion from the college the petitioners who are final year engineering degree course students. On perusal of the reply filed by the Government, it appears that these two students were

involved in some criminal case and FIR has been lodged against them. The Principal of the college issued show cause notice to the petitioners why they shall not be expelled from the institute. Thereafter a committee examined the matter and suggested some measures to the Principal. Accordingly the respondent no.1 Principal passed the order of expulsion of the petitioners. Having felt aggrieved by the order of expulsion, petitioners filed this petition and in the petition an interim order has been passed by this Court allowing them to appear in the final year B.E. examination on furnishing an undertaking of good behaviour. Accordingly petitioners furnished undertaking and they were permitted to appear in the final year examinatin of engineering degree.

3. The short question that has been raised in the petition is that the order passed by the Principal is vitiated by the doctrine of 'bias'.

4. I have heard Mr. Vijay Patel learned counsel appearing on behalf of the petitioners. Learned counsel submitted that, according to the rules of the institution the Principal is the final authority to take disciplinary action against any student and is competent to impose any penalty of fine, suspension and rustication. Therefore it appears that the Principal is the only authority to impose penalty to a student who has committed the breach of any conditions of admission or if a student crates any disturbance within the college premises the Principal can impose any of the aforesaid penalties. It is submitted that when there was disturbance in the college premises it is alleged that the petitioners were involved in such incident, and accordingly the Principal issued show cause notice to the petitioners. Thereafter the students have also filed reply but the Principal did not hear the petitioners in person. From the order passed by the Principal dated 2-5-2001 it appears that the Principal expelled the petitioners as per the instructions of the Government. It is not clear how the Government can instruct the principal to expel the students. It is possible that when any incident takes place in an educational institutions the matter might have been brought to the notice of the Government to maintain law & order in the institution. But it has nothing to do with the disciplinary action on the students. If FIR is lodged against the petitioners then they will face the trial, but so far as disciplinary action by an authorised authority is concerned, it is the Principal alone, who after issuing show cause notice to the students and after hearing them impose any of the penalties as mentioned in the rules & regulations of the admission form. On a bare

perusal of the order of the Principal dated 2-5-2001 (Anneuxre-A) it appears that the Principal did not personally made an inquiry, and it is not the satisfaction that led him to take the decision to expel the students. From the order at Annexure-A it is clear that under instructions of the Government, the Principal has expelled the students. It is not contemplated in the rules as provided in the applicaton form. Therefore I am of the view that the order passed by the Principal suffers from bias. The Principal did not form his own opinion regarding disciplinary action to be taken against the petitioners but he has take the action as per the instructions of the Government. Therefore I am of the view that the order suffers from illegality and therefore, the order is liable to be quashed. Accordingly the petition is allowed. The order dated 2-5-2001 passed by the Principal at Annexure-A is hereby quashed. Consequent upon quashing of the order, the result of the two petitioners be declared by the respondents. Rule made absolute to the aforesaid extent. I make no order as to costs.

Dt: 19-7-2001 (P.K. Sarkar, J)

/vgn.